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SAN DIEGO COUNTY, CA

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF SAN DIEGO**

12 WILLIAM E. LAW, individually and on  
behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 BOB BAKER IMPORTS, INC., a  
16 California corporation, d.b.a. BOB  
BAKER TOYOTA / SCION;  
17 TOYOTA MOTOR CREDIT ✓  
CORPORATION, a California  
18 corporation, d.b.a. TOYOTA LEASE ✓  
TRUST;  
19 and DOES 1 through 10, inclusive,

20 Defendants.  
21  
22  
23

CW  
24 CASE NO. 37-2008-00094532-CU-CO-  
CTL

**CLASS ACTION**

FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF, RESTITUTION, AND  
DAMAGES:

1. VIOLATION OF THE CONSUMERS  
LEGAL REMEDIES ACT - CLASS  
CLAIM
2. VIOLATION OF THE CONSUMERS  
LEGAL REMEDIES ACT -  
INDIVIDUAL CLAIM
3. VIOLATION OF THE VEHICLE  
LEASING ACT - CLASS CLAIM
4. UNLAWFUL, UNFAIR, AND/OR  
FRAUDULENT BUSINESS ACTS AND  
PRACTICES - CLASS CLAIM
5. FRAUD AND CONCEALMENT -  
INDIVIDUAL CLAIM

24 Plaintiff William E. Law, individually and on behalf of others similarly situated as to  
25 the First, Third, and Fifth Causes of Action, alleges as follows against Defendant Bob  
26 Baker Imports, Inc., d.b.a. Bob Baker Toyota / Scion ("Bob Baker") and Toyota Motor  
27 Credit Corporation d.b.a. Toyota Lease Trust ("TMCC"), on information and belief, formed  
28 after an inquiry reasonable under the circumstances:

## INTRODUCTION

1  
2       1.       The Department of Motor Vehicles has established a Business Partner  
3 Automation Program whereby Business Partners can offer to perform certain registration  
4 matters in exchange for a fee. The DMV mandates use of a Business Partner Automation  
5 Disclaimer form in connection with every transaction when a fee is charged. The Code of  
6 Regulations permits Business Partners to disclose the fee on lease agreements, but does  
7 not provide an exception from completing a form. The fee is optional for consumers to  
8 decide whether they wish to pay for the services, and is required to be disclosed on lease  
9 agreements as the "Optional DMV Electronic Filing Fee."

10       2.       Defendant Toyota Motor Credit Corporation is the financing arm of Toyota  
11 Financial Services, a subsidiary of Toyota Motor Corporation, in the United States. The  
12 company provides financial services to Toyota dealers and their customers for the  
13 purchase or lease of new and used cars and trucks. As to the leasing services, TMCC  
14 provides pre-printed lease contracts to dealerships in California for the lease of Toyota  
15 vehicles.

16       3.       Defendant Bob Baker is a Toyota dealership operating in San Diego County.  
17 Plaintiff William E. Law went to Bob Baker and signed a lease for a 2008 Toyota Tundra  
18 with VIN: 5TFRV541X8X039013 (the "Vehicle") on January 22, 2008. The lease was a  
19 pre-printed form lease from TMCC, and did not have a line for the disclosure of the  
20 "Optional DMV Electronic Filing Fee." Thus, Bob Baker was responsible for correctly  
21 labeling the fee in one of the blank fields provided on the lease. Instead, Bob Baker  
22 improperly labeled the fee "Elec. DMV Fee," thereby not disclosing to customers that it was  
23 an optional fee the customer could refuse. Bob Baker charges its customers the maximum  
24 allowable fee on their leases, but does not have customers sign the disclosure form  
25 identifying the fee and its purpose. The lease was subsequently assigned to TMCC.

26       4.       The conduct herein described violates, *inter alia*, the Vehicle Leasing Act  
27 ("VLA"), Civil Code Section 2985.7, *et seq.*, the Consumers Legal Remedies Act ("CLRA"),  
28 Civil Code Section 1750, *et seq.*, the California Code of Regulations, 13 C.C.R. 225.45,

1 and Business and Professions Code Section 17200, *et seq.* ("Unfair Competition Law" or  
2 "UCL").

3 **JURISDICTION AND VENUE**

4 5. This Court has jurisdiction over all causes of action asserted herein pursuant  
5 to the California Constitution, Article VI, Section 10, because this case is a cause not given  
6 by statute to other trial courts.

7 6. This Court has jurisdiction over Defendants because each are individuals,  
8 associations, or corporations that are either authorized to conduct or, in fact, do conduct  
9 substantial business in the State of California.

10 7. Venue is proper in this County pursuant to Code of Civil Procedure  
11 Section 395(b) because the acts upon which this action is based arise from the provision  
12 of goods intended primarily for personal or household use, and Plaintiff resided in this  
13 County at the time he signed the contract and at the commencement of the action.

14 **PARTIES**

15 8. Plaintiff is an individual residing in the City of La Mesa, County of San Diego.

16 9. Defendant Bob Baker is a California corporation doing business in the City  
17 of Lemon Grove, County of San Diego.

18 10. Defendant TMCC is a California corporation doing business in the City of  
19 Torrance, State of California.

20 11. Plaintiff does not know the true names and capacities, whether corporate,  
21 partnership, associate, individual, or otherwise of Defendants sued herein as Does 1  
22 through 10, inclusive, under the provisions of Section 474 of the California Code of Civil  
23 Procedure. Defendants Does 1 through 10, inclusive, are in some manner responsible for  
24 the acts, occurrences, and transactions set forth herein, and are legally liable to Plaintiff  
25 and the general public. Plaintiff will set forth the true names and capacities of the  
26 fictitiously-named Defendants together with appropriate charging allegations when  
27 ascertained.

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1 Class members are unknown at this time and can only be ascertained through appropriate  
2 investigation and discovery, the Class likely includes hundreds of California residents.

3 **B. EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS OF LAW**  
4 **AND FACT**

5 18. Common questions of law and fact arising out of the claims here at issue  
6 exist as to all members of the Class and predominate over any individual issues. These  
7 common legal and factual questions include, but are not limited to, the following:

- 8 a. whether Defendants violated state consumer protection statutes;  
9 b. whether Defendants properly disclosed Optional DMV Electronic Filing Fees;  
10 c. the amount of revenues and profits Defendants received and/or the amount  
11 of monies or other obligations imposed on or lost by Class members as a  
12 result of such wrongdoing;  
13 d. whether Class members are threatened with irreparable harm and are  
14 entitled to injunctive and other equitable relief and, if so, what is the nature  
15 of such relief; and  
16 e. whether Class members are entitled to payment of actual, incidental,  
17 consequential, exemplary, punitive, and/or statutory damages plus interest  
18 thereon, and if so, what is the nature of such relief.

19 **C. TYPICALITY OF CLAIMS**

20 19. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff  
21 and all members of the Class were improperly charged Optional DMV Electronic Filing  
22 Fees. In regard to the proposed sub-Class, Plaintiff's lease agreement was a pre-printed  
23 TMCC lease agreement that was assigned to TMCC. Thus, Plaintiff and all members of  
24 the Class had their legal rights infringed upon, sustained injuries, losses, and damages as  
25 described herein, and/or are facing irreparable harm arising out of Defendants' common  
26 course of conduct. The right of Plaintiff and each member of the Class to payment of any  
27 actual, incidental, consequential, exemplary, and/or statutory damages or restitution  
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1 resulting therefrom were proximately caused by Defendants' wrongful conduct, in violation  
2 of state law as alleged herein.

3 **D. ADEQUATE REPRESENTATION**

4 20. Plaintiff will fairly and adequately protect the interests of the members of the  
5 Class in that he has no irreconcilable conflicts with or interests materially antagonistic to  
6 those of the other Class members.

7 21. Plaintiff has retained attorneys experienced in the prosecution of class  
8 actions, including consumer class actions.

9 **E. SUPERIORITY AND SUBSTANTIAL BENEFITS OF CLASS LITIGATION**

10 22. To the extent it is an element for establishing class certification for certain  
11 causes of action, a class action is superior to other available methods for the fair and  
12 efficient group-wide adjudication of this controversy and, as applicable, possesses  
13 substantial benefits. Individual joinder of all members of the Class is impracticable, and  
14 no other group method of adjudication of all claims asserted herein is more efficient and  
15 manageable while at the same time providing all the remedies available to ensure the full  
16 purpose of this State's consumer protection laws are effectuated. Furthermore, as the  
17 damages suffered by each individual member of the Class may be relatively small and the  
18 relief sought discrete, the expense and burden of individual litigation in order to obtain such  
19 relief would make it difficult or impossible for individual members of the Class to redress  
20 the wrongs done to them, and the cost to the court system of adjudicating such litigation  
21 on an individual basis would be substantial. The Class members, because of the amounts  
22 at stake, would have little interest in individually controlling the prosecution of separate  
23 actions; to counsel's knowledge there has not been any substantial litigation concerning  
24 this controversy commenced against the parties; and it is not anticipated that there will be  
25 any difficulties in the management of this litigation due to the focus of the wrongdoing on  
26 Defendants' conduct and their knowledge of the true facts. Individualized litigation would  
27 also present the potential for varying, inconsistent, or contradictory judgments and would  
28 magnify the delay and expense to all parties and to the court system resulting from multiple

1 trials of the same factual issues. The conduct of this action as a class action presents  
2 fewer management difficulties, conserves the resources of the parties and the court  
3 system, and protects the rights of each Class member as compared to other methods for  
4 the group-wide adjudication of this controversy. Thus, both the Class and the court system  
5 achieve substantial benefits by the prosecution of this action on a class-wide basis by  
6 avoiding the burden of multiple litigation involving identical claims, as well as by aiding  
7 legitimate business enterprises in curtailing illegitimate competition and ensuring a  
8 therapeutic effect on those companies such as Bob Baker that indulge in fraudulent  
9 practices.

10 23. Notice of the pendency of and any resolution of this action can be provided  
11 to the Class members by publication and/or individual mailed notice, as appropriate under  
12 California law, and such costs are properly imposed on Defendants.

13 24. This action is also properly certified to proceed on a class-wide basis  
14 because:

- 15 a. the prosecution of separate actions by the individual members of the Class  
16 would create a risk of inconsistent or varying adjudications with respect to  
17 individual Class members, thus establishing incompatible standards of  
18 conduct for Defendants;
- 19 b. because of the nature of the relief sought, the prosecution of separate  
20 actions by individual Class members would create a risk of adjudication with  
21 respect to them that would, as a practical matter, be dispositive of the  
22 interests of the other Class members not parties to such adjudications or  
23 would substantially impair or impede the ability of such Class members to  
24 protect their interests; and
- 25 c. Defendants have acted or refuse to act in respects generally applicable to  
26 the Class, thereby making appropriate final injunctive relief with regard to the  
27 members of the Classes as a whole in terms of the equitable relief sought.

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**SUMMARY OF INDIVIDUAL FACTS**

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2       25.    On January 22, 2008, Mr. Law entered into a lease for personal use of the  
3 Vehicle with Bob Baker.

4       26.    The lease agreement was a pre-printed form prepared by TMCC.

5       27.    Bob Baker programmed its computer system to print on a blank line in the  
6 "Amount Due at Lease Signing or Delivery" section a label of "Elec. DMV Fee."

7       28.    Mr. Law was charged \$28 as an "Elec. DMV Fee." The fee was not  
8 discussed with Mr. Law in any way at any time during the lease transaction. Nowhere on  
9 the lease or in the negotiations was the fee disclosed as "optional."

10       29.    Mr. Law was charged for additional products and services that were not  
11 agreed to prior to signing the lease, in violation of Vehicle Code §11713.19, including "Auto  
12 Pack" for \$79. Plaintiff, in fact, never agreed to any such charge. The lease included an  
13 unconscionable arbitration clause in the lease contract.

14       30.    Mr. Law's lease was assigned by Bob Baker to TMCC.

15       31.    On October 14, 2008, Plaintiff, served Defendant Bob Baker via certified and  
16 regular mail a Consumers Legal Remedies Act notification and demand letter. The letter  
17 sought relief on behalf of Mr. Law and all similarly-situated consumers. The letter was  
18 received by Bob Baker on October 15, 2008.

19       32.    On November 14, 2008, Bob Baker offered to refund to Mr. Law \$28 in  
20 exchange for a dismissal of all claims. Bob Baker's offer was an inadequate remedy for  
21 its conduct, and Bob Baker did not offer any relief to any other similarly-situated  
22 consumers.

23       33.    Bob Baker is, on information and belief, a licensed dealer and lessor-retailer  
24 in this state within the terms of California Vehicle Code Sections 285 and 373.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of Consumers Legal Remedies Act, Civil Code Section 1750, et seq.**

3 **– Class Claim against Defendant Bob Baker and Does 1-10**

4 34. Plaintiff incorporates by reference each and every allegation set forth in  
5 Paragraphs 1 through 33, inclusive, of this Complaint. This cause of action is brought by  
6 Plaintiff individually and on behalf of all others similarly-situated.

7 35. The vehicles leased by Plaintiff and members of the Class constitute “goods”  
8 leased for use primarily for personal, family, or household purposes pursuant to Civil Code  
9 Section 1761(a).

10 36. Plaintiff and members of the Class are “consumers” pursuant to Civil Code  
11 Section 1761(d). Bob Baker is a “person” pursuant to Civil Code Section 1761(c).

12 37. The advertisement and lease of the vehicles to Plaintiff and members of the  
13 Class are “transactions” pursuant to Civil Code Section 1761(e).

14 38. The policies, acts, and practices engaged in by Bob Baker and alleged herein  
15 were intended to, and did, result in the lease of the vehicles at issue to Plaintiff and the  
16 Class Members primarily for personal, family, or household purposes, and violated and  
17 continued to violate the CLRA in at least the following respects:

18 a. Bob Baker represented that the transactions conferred or involved rights,  
19 remedies, or obligations which they did not have or involve, or which were  
20 prohibited by law.

21 b. Bob Baker inserted unconscionable provisions in the lease agreements.

22 39. Section 1780(a)(2) of the Act provides that a consumer is entitled to an  
23 injunction prohibiting acts or practices which violate the Act. Plaintiff alleges that  
24 Defendants have established a pattern and practice of improperly disclosing the Optional  
25 DMV Electronic Filing Fee, and failing to disclose the fee as “optional” as required by  
26 California law. Plaintiff seeks an injunction requiring Bob Baker to disclose the fee as an  
27 “Optional DMV Electronic Filing Fee” on all leases, and, if appropriate, to program its  
28 computers so that the Fee is not automatically charged on all leases.



1 Defendants have established a pattern and practice of improperly disclosing the Optional  
2 DMV Electronic Filing Fee, packing optional products and services into lease contracts,  
3 including unconscionable clauses into agreements, and failing to obtain agreements to  
4 purchase optional goods and services prior to lease contracts.

5 47. Plaintiff seeks all available remedies pursuant to Civil Code Section 1780(d),  
6 including restitution, compensatory damages, punitive damages, and attorneys' fees and  
7 costs according to proof at time of trial.

8 **THIRD CAUSE OF ACTION**

9 **Violation of the Vehicle Leasing Act**

10 **– against All Defendants**

11 48. Plaintiff incorporates by reference each and every allegation set forth in  
12 Paragraphs 1 through 47, inclusive, of this Complaint. This cause of action is brought by  
13 Plaintiff individually, and on behalf of all others similarly situated.

14 49. The lease contract for the vehicle is a lease contract under the Vehicle  
15 Leasing Act.

16 50. Defendants are "lessors" under the Act.

17 51. Plaintiff and members of the Class are "lessees" under the Act.

18 52. The vehicle leased by Plaintiff and members of the Class are "motor vehicles"  
19 under the Act.

20 53. Defendants violated the Act by failing to properly identify the Optional DMV  
21 Electronic Filing Fee as an "Optional DMV Electronic Filing Fee" on the leases, in violation  
22 of Civil Code § 2985.8.

23 54. The violation of Civil Code § 2985.8 appears on the face of the lease.

24 55. Defendants' violations of the Act were willful, and therefore Plaintiff and  
25 members of the class are entitled to rescind their leases and recover attorneys' fees.

26 56. To the extent Defendants' violations were not willful, Plaintiff and members  
27 of the Class have been damaged by Defendants' violations of the Act and are entitled to  
28

1 damages pursuant to Civil Code Sections 2988.5(a) and (b), including attorneys' fees and  
2 costs, and request injunctive relief to correct Defendants' conduct moving forward.

3 **FOURTH CAUSE OF ACTION**

4 **Commission of Unlawful, Unfair, and/or Fraudulent Business Acts and Practices**

5 **Violation of Business & Professions Code §17200, *et seq.***

6 **– against All Defendants**

7 57. Plaintiff, on his own behalf and on behalf of the Class members, incorporates  
8 by reference the allegations in Paragraphs 1 through 56, inclusive, of this Complaint.

9 58. Defendants' acts, omissions, misrepresentations, practices, and non-  
10 disclosures constituted unlawful, unfair, and fraudulent business acts and practices within  
11 the meaning of California Business & Professions Code Sections 17200, *et seq.*

12 59. Mr. Law and the members of the Class have suffered injury in fact and have  
13 lost money as a result of Defendants' business practices.

14 60. Defendants have engaged in "unlawful" business acts and practices by failing  
15 to properly disclose the Optional DMV Electronic Filing Fee on leases, and/or to separately  
16 disclose these fees. These policies, acts, and practices were intended to and did violate,  
17 *inter alia*, California Civil Code Section 1709, *et seq.*, the Consumers Legal Remedies Act,  
18 California Civil Code Section 1750, *et seq.*, the Vehicle Leasing Act, California Civil Code  
19 Section 2985.7, *et seq.*, 13 California Code of Regulations Section 225.45, at a minimum.

20 61. Accordingly, Defendants have violated Business & Professions Code Section  
21 17200's proscription against engaging in an "unlawful" business act or practice.

22 62. Defendants have also engaged in a "fraudulent" business act or practice in  
23 that the representations and omissions of material fact described above have a tendency  
24 and likelihood to deceive purchasers of these vehicles and the general public.

25 63. Defendants have also engaged in an "unfair" business act or practice in that  
26 the justification for leasing vehicles based on the misrepresentations and omissions of  
27 material fact delineated above is outweighed by the gravity of the resulting harm,  
28

1 particularly considering the available alternatives, and offends public policy, is immoral,  
2 unscrupulous, unethical, and offensive, or causes substantial injury to consumers.

3 64. The above-described unlawful, fraudulent, and/or unfair business acts and  
4 practices conducted by Defendants continue to this day and present a threat to Plaintiff  
5 and/or the general public in that Defendants have failed to publicly acknowledge the  
6 wrongfulness of their actions and provide full equitable, injunctive, and monetary relief as  
7 required by the statute.

8 65. Pursuant to California Business & Professions Code Section 17203, Plaintiff,  
9 and the general public seek an order of this Court requiring Defendants to immediately  
10 cease such acts of unfair competition and enjoining Defendants from continuing to conduct  
11 business via the unlawful, fraudulent, and/or unfair business acts and practices set forth  
12 in this Complaint and from failing to fully disclose the true nature of their  
13 misrepresentations, and ordering Defendants to engage in a corrective notice and  
14 advertising campaign. Plaintiff additionally requests an order from the Court requiring that  
15 Defendants provide complete equitable monetary relief so as to prevent Defendants from  
16 benefitting from the practices that constitute unfair competition or the use or employment  
17 of any monies resulting from the lease of these vehicles, including requiring the payment  
18 of restitution of any monies as may be necessary to restore to any member of the Class  
19 any money or property which may have been acquired by means of such acts of unfair  
20 competition.

### 21 FIFTH CAUSE OF ACTION

#### 22 **Fraud and Concealment – against Defendants Bob Baker and Does 1-10**

23 66. Plaintiff incorporates by reference the allegations in Paragraphs 1 through  
24 65, inclusive, of this Complaint. This cause of action is brought by Plaintiff individually.

25 67. The representations and omissions of material fact made by Defendants as  
26 defined above in Paragraphs 22 through 29 were not true.

27 68. At the time the purchase contracts were executed, and afterward, Defendants  
28 made the misrepresentations as set forth above. These misrepresentations included, but

1 are not limited to, the following: that Plaintiff's original lease was lawfully drafted; that the  
2 "Elec. DMV Fee" was a mandatory fee, that Mr. Law had agreed to the additional products  
3 and services as charged on the lease contract.

4 69. At the time the lease agreement was executed, and afterward, Defendants  
5 omitted material facts from the statements they had made as set forth above, the  
6 disclosure of which were necessary in order to make Defendants' other statements not  
7 misleading. These omissions include, but are not limited to, that the "Elec. DMV Fee" was  
8 an optional fee, and that unagreed charges would be inserted in the contract.

9 70. Regardless of their actual belief, Defendants made the representations and  
10 omissions of material fact without any reasonable grounds for believing them to be true.

11 71. Defendants failed to exercise due care in ascertaining the accuracy of the  
12 representations or omissions of fact made to Plaintiff.

13 72. Defendants made the representations or omissions of fact for the purpose  
14 of inducing Plaintiff to rely upon them, and to act, or refrain from acting, in reliance thereon.

15 73. Plaintiff was unaware of the falsity of the representations or omissions and  
16 acted in reasonable reliance upon the truth of those representations and was justified in  
17 relying upon those representations.

18 74. As a direct and proximate result of Defendants' misrepresentations or  
19 omissions of material fact, Plaintiff has suffered damages, including actual, consequential,  
20 and incidental damages, according to proof of trial.

21 75. Plaintiff hereby alleges material facts pertaining to the purchase contract  
22 were misrepresented, and therefore he is entitled to rescission of the purchase contract  
23 and restitution and attorneys' fees and costs in an amount according to proof at trial.

24 76. Defendants' conduct constitutes conduct that is oppressive, fraudulent, or  
25 malicious, also entitling Plaintiff to punitive damages under Civil Code Section 3294, and  
26 the acts of Defendant's corporate employees as alleged were authorized or ratified by an  
27 officer, director, or managing agent of Defendant.

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1           WHEREFORE, Plaintiff prays for judgment as follows, on behalf of himself and the  
2 Class as appropriate for the particular causes of action:

- 3           1.     An Order certifying the Class under the appropriate provisions of California  
4                 law, and appointing Plaintiff and his counsel to represent the Class.
- 5           2.     For the declaratory, equitable, and/or injunctive relief requested.
- 6           3.     For general, special, and actual damages according to proof at trial.
- 7           4.     For rescission and/or restitution of all monies required to be expended.
- 8           5.     For incidental and consequential damages according to proof at trial.
- 9           6.     For the specified causes of action, punitive and/or statutory damages.
- 10          7.     For pre-judgment interest at the legal rate.
- 11          8.     For reasonable attorneys' fees and costs of suit as specified under, *inter alia*,  
12                 Code of Civil Procedure Section 1021.5, and Civil Code Sections 1717,  
13                 1780(d), and 2988.5, and 2988.9.
- 14          9.     For such other and further relief as the Court deems just and proper under  
15                 the circumstances.

16 DATED: February 4, 2009

ROSNER & MANSFIELD, LLP

17 By:   
18 \_\_\_\_\_  
19           CHRISTOPHER P. BARRY  
20           Attorneys for Plaintiff

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PROOF OF SERVICE

**Law v. Bob Baker Imports, Inc.**  
**San Diego County Sup. Court Case No. 37-2008-00094532-CU-CO-CTL**

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is: 10085 Carroll Canyon Road, Suite 100, San Diego, California 92131.

On **February 10, 2009**, I served the foregoing document(s) described as:

**First Amended Complaint for Injunctive Relief, Restitution, and Damages**

on the interested parties in this action at San Diego, California as follows:

The Law Office of James S. Marinos 111 Elm Street, Suite 300 San Diego, CA 92101-2682 Tel: (619) 236-1717 Fax: (619) 236-9086 Email: <a href="mailto:marinoslaw@sbcglobal.net">marinoslaw@sbcglobal.net</a> Attorney for Bob Baker Imports, Inc., d.b.a. Bob Baker Toyota/Scion	
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**BY U.S. MAIL:** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:

(1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2)  placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage thereon fully prepaid, at San Diego, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**BY FACSIMILE:** On the date below, the document(s) were transmitted by facsimile transmission to each of the parties at the facsimile number(s) listed above and the transmission(s) reported as complete and without error. A true and correct copy of the said transmission report is attached hereto and incorporated herein by reference.  
**[attach copy of fax transmission]**

**(BY ELECTRONIC MAIL, CRC 2.260 and CCP §2015.5):** The documents were transmitted via email from [danette@rosnerandmansfield.com](mailto:danette@rosnerandmansfield.com) on \_\_\_\_\_ at \_\_\_\_\_ am/pm to each of the parties at the email address(s) listed above and the transmission(s) reported complete and without error.

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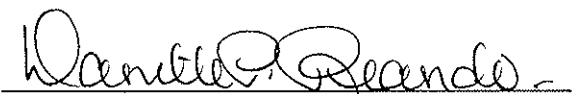
**BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the above addressed. I caused such envelope or package to be deposited in a regularly utilized drop box of the overnight delivery carrier.

**BY PERSONAL SERVICE:** I caused to be personally delivered the documents listed above to the addressee(s) named above.

**(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

**(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **February 10, 2009**, at San Diego, California.

  
\_\_\_\_\_  
Danette P. Reando